

AMENDED IN ASSEMBLY JUNE 9, 2005

AMENDED IN SENATE MAY 10, 2005

AMENDED IN SENATE APRIL 28, 2005

**SENATE BILL**

**No. 896**

---

**Introduced by Senator Runner**

February 22, 2005

---

An act to add Chapter 9 (commencing with Section 5610) to Part 5 of Division 9 of the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

SB 896, as amended, Runner. Child support.

Existing law governs the collection of child support by local child support agencies, or by means of a writ of execution, a notice of levy, or earnings assignment order.

This bill would enact the Private Child Support Collection Act. These provisions would regulate the activities of private child support collectors, as defined. Among other things, the bill would require a private child support collector to provide specified notices and disclosures to the child support obligee in a written contract and additional information about child support payments during the term of the contract, authorize the obligee to cancel any contract entered into with that entity in certain circumstances, prescribe the rights of the parties with respect to child support agencies and other governmental entities, and prescribe procedures and remedies for enforcement of the provisions of the act.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 9 (commencing with Section 5610) is added to Part 5 of Division 9 of the Family Code, to read:

CHAPTER 9. PRIVATE CHILD SUPPORT COLLECTORS

5610. (a) For the purposes of this section, “private child support collector” means ~~a person~~ *any individual*, corporation, attorney, *nonprofit organization*, or other nongovernmental entity who is engaged by an obligee to collect child support ordered by a court or other tribunal for a fee or other consideration. The term does not include any attorney who addresses issues of ongoing child support or child support arrearages in the course of an action to establish parentage or a child support obligation, a proceeding under Division 10 (commencing with Section 6200), a proceeding for dissolution of marriage, legal separation, or nullity of marriage, or in post judgment or modification proceedings related to any of those actions. *A “private child support collector” includes any private, nongovernmental attorney whose business is substantially comprised of the collection or enforcement of child support. As used in this subdivision, “substantially” means that at least 50 percent of the attorney’s business, either in terms of remuneration or time spent, is comprised of the activity of seeking to collect or enforce child support obligations for other individuals.*

(b) Any contract for the collection of child support between a private child support collector and an obligee shall be written in simple language, in at least 10-point type, signed by the private child support collector and the obligee. The contract shall be delivered to the obligee in a paper form that the obligee may retain for his or her records. The contract shall include all of the following:

(1) An explanation of the fees imposed by contract and otherwise permitted by law and an example of how they are calculated and deducted.

(2) A statement that the amount of fees to be charged is set by the agency and is not set by state law.

(3) An explanation of the nature of the services to be provided.

1 (4) The expected duration of the contract, stated as a length of  
2 time or as an amount to be collected by the collection agency.

3 (5) An explanation of the opportunities available to the obligee  
4 or private child support collector to cancel the contract or other  
5 conditions under which the contract terminates.

6 (6) The mailing address, street address, telephone numbers,  
7 facsimile numbers, and Internet address or location of the private  
8 child support collector.

9 (7) A statement that the private child support collector is not a  
10 government entity and that government entities in California  
11 provide child support collection and enforcement services free of  
12 charge.

13 (8) A statement that the private child support collector collects  
14 only money owed to the obligee and not support assigned to the  
15 state or county due to the receipt of CalWORKs or Temporary  
16 Assistance to Needy Families.

17 (9) A statement that the private child support collector will not  
18 retain fees from collections that are primarily attributable to the  
19 actions of a government entity or any other person or entity and  
20 is required by law to refund any fees improperly retained.

21 (10) A statement that the obligee may continue to receive, or  
22 may pursue, services through a government entity to collect  
23 support, and the private child support collection agency will not  
24 require or request that the obligee cease or refrain from engaging  
25 those services.

26 (11) A notice *that* the private child support collector is  
27 required to keep and maintain case records for a period of four  
28 years and four months, after the expiration of the contract and  
29 may thereafter destroy or otherwise dispose of the records. The  
30 obligee may, prior to destruction or disposal, retrieve those  
31 portions of the records that are not confidential.

32 (12) A “Notice of Cancellation,” which shall be included with  
33 the contract and which shall contain, in the same size font as the  
34 contract, the following statement, written in the same language as  
35 the contract

36  
37 “Notice of Cancellation

38  
39 You may cancel this contract, without any penalty or  
40 obligation, within 15 business days from the date the contract is

1 signed or you receive this notice, whichever is later,  
2 or \_\_\_\_\_ (all other reasons for  
3 cancellation permitted).

4 To cancel this contract, mail or deliver a signed copy of this  
5 cancellation notice or any other written notice to  
6 \_\_\_\_\_ (name of private child support  
7 collector) at  
8 \_\_\_\_\_ (address  
9 for mail or delivery) no later than midnight on  
10 \_\_\_\_\_ (date).

11 I am canceling this contract. \_\_\_\_\_ (date)  
12 \_\_\_\_\_ (signature)”  
13

14 (c) (1) An obligee shall have the right to cancel a contract  
15 with a private support collector within 15 business days of the  
16 later of signing the contract, or receiving a blank notice of  
17 cancellation form, or at any time if the private child support  
18 collector commits a material breach of any provision of the  
19 contract or a material violation of any provision of this chapter  
20 with respect to the obligee or the obligor.

21 (2) A contract shall automatically terminate when the contract  
22 term has expired or the contract amount has been collected,  
23 whichever occurs sooner.

24 (3) No private child support collector shall take an assignment  
25 of the support obligation.

26 (4) A private child support collector that improperly retains  
27 fees from collections that are primarily attributable to the actions  
28 of a government entity or to any other person or entity shall  
29 refund all of those fees to the obligee immediately upon  
30 discovery or notice of the improper retention of fees.

31 (d) (1) A private child support collector shall provide to an  
32 obligee all of the following information:

33 (A) The name of, and other identifying information relating to,  
34 any obligor who made child support payments collected by the  
35 private child support collector.

36 (B) The amount of support collected by the private child  
37 support collector.

38 (C) The date on which each amount was received by the  
39 private child support collector.

1 (D) The date on which each amount received by the private  
2 child support collector was sent to the obligee.

3 (E) The amount of the payment sent to the obligee.

4 (F) The source of payment of support collected and the actions  
5 affirmatively taken by the private child support collector that  
6 resulted in the payment.

7 (G) The amount and percentage of each payment kept by the  
8 private child support collector as its fee.

9 (2) The information required by paragraph (1) shall either be  
10 made available by mail, telephone, or via secure Internet access.  
11 If provided by mail, the notice shall be sent at least quarterly.  
12 Information accessed by telephone and the Internet shall be up to  
13 date.

14 (e) (1) A private child support collector shall maintain records  
15 of all child support collections made on behalf of a client who is  
16 an obligee. The records required under this section shall be  
17 maintained by the private child support collector for the duration  
18 of the contract plus for a period of four years and four months  
19 from the date of the last child support payment collected by the  
20 private child support collector on behalf of an obligee. In  
21 addition to information required by subdivision (d), the private  
22 child support collector shall maintain the following:

23 (A) A copy of the order establishing the child support  
24 obligation under which a collection was made by the private  
25 child support collector.

26 (B) Records of all correspondence between the private child  
27 support collector and the obligee or obligor in a case.

28 (C) Any other pertinent information relating to the child  
29 support obligation, including any case, cause, or docket number  
30 of the court having jurisdiction over the matter and official  
31 government payment records obtained by the private child  
32 support collector on behalf of, and at the request of, the obligee.

33 (2) A private child support collector shall safeguard case  
34 records in a manner reasonably expected to prevent intentional or  
35 accidental disclosure of confidential information pertaining to the  
36 obligee or obligor, including providing necessary protections for  
37 records maintained in an automated system.

38 (3) Every person who contracts with a private child support  
39 collector shall have the right to review all files and documents,  
40 both paper and electronic, in the possession of the private child

1 support collector regarding that obligee's case that are not  
2 required by law to be kept confidential. The obligee, during  
3 regular business hours, shall be provided reasonable access to  
4 and copies of the files and records of the private child support  
5 collector regarding all moneys received, collection attempts  
6 made, fees retained or paid to the private child support collector,  
7 and moneys disbursed to the obligee. The private child support  
8 collector may not charge a fee for access to the files and records,  
9 but may require the obligee to pay up to three cents (\$.03) per  
10 page for the copies prior to their release.

11 (f) A private child support collector shall not do any of the  
12 following:

13 (1) Collect or attempt to collect child support by means of any  
14 conduct that is prohibited of a debt collector collecting a  
15 consumer debt under Sections 1788.10 to 1788.16, inclusive, of  
16 the Civil Code.

17 (2) Misstate the amount of the fee that may be lawfully paid  
18 the private child support collector for the performance of the  
19 contract or the identity of the person who is obligated to pay that  
20 fee.

21 (3) Make a false representation of the amount of child support  
22 to be collected. A private child support collector is not in  
23 violation of this paragraph if it reasonably relied on evidence  
24 provided by the government entity collecting child support, a  
25 court with jurisdiction over the support obligation, or from the  
26 obligee, or upon proof provided by the obligor.

27 (4) Ask any party other than the obligor to pay the child  
28 support obligation, unless that party is legally responsible for the  
29 obligation or is the legal representative of the obligor.

30 (g) (1) A person may bring an action for actual damages  
31 incurred as a result of a violation of this section.

32 (2) In addition to actual damages, a private child support  
33 collector who willfully and knowingly violates the provisions of  
34 this section shall be liable for a civil penalty in an amount  
35 determined by the court, which may not be less than one hundred  
36 dollars (\$100) nor more than one thousand dollars (\$1,000).

37 (3) A person who prevails in an action brought pursuant to this  
38 section is entitled to recover court costs. Reasonable attorney's  
39 fees shall be awarded to a prevailing obligee or obligor. On a  
40 finding by a court that an action pursuant to this section was

1 brought by an obligee or obligor in bad faith or for purposes of  
2 harassment, the court shall award the private child support  
3 collector attorney's fees reasonably related to the work  
4 performed and costs.

5 (4) A private child support collector is not in violation of this  
6 section if the private child support collector shows, by a  
7 preponderance of the evidence, that the action complained of was  
8 not intentional and resulted from a bona fide error that occurred  
9 notwithstanding the use of reasonable procedures to avoid the  
10 error.

11 (5) The remedies provided in this subdivision are cumulative  
12 and are in addition to any other procedures, rights, or remedies  
13 available under ~~other provision of the~~ *any other* law.

14 (h) Any waiver of the rights, requirements, and remedies  
15 provided by this section violates public policy and is void.